

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 699 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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JIVANKUMAR SETURAM SHARMA & 1 - Applicant(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

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Appearance :

MR H.S.MULIA for Applicant(s) : 1 - 2.
 MR. H.M.PRACHHAK, APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 15/09/2005

ORAL JUDGMENT

- 1.**RULE.** Mr. H.M.Prachhak, learned APP appears and waives service of notice of Rule on behalf of the respondent-State of Gujarat.
- 2.By filing instant petition under Section 397 read with

Section 401 of the Code of Criminal Procedure ('the Code' for short), the petitioners seek to challenge the judgement and order dated 17.8.2005 rendered in Criminal Appeal No. 1 of 2005 by the learned Additional Sessions Judge, Vyara, by which the appeal filed by the petitioners came to be dismissed and thereby judgement and order dated 27.7.2005 recorded in Criminal Case No. 2232 of 2005 by the learned Judicial Magistrate First Class, Bardoli, convicting and sentencing the petitioners for commission of the offences punishable under Sections 65 (a), 65(e) and under Section 66(1) B of the Bombay Prohibition Act 1949 ('the Act' for short), has been confirmed and maintained.

3. By the said judgement and order, the learned JMFC, Bardoli has convicted the petitioners for the offence punishable under Section 81, 116(1)B read with Section 66(1)B, 65(a) and 65(e) of the Act and the petitioners were sentenced to suffer SI for a period of 3 months and to pay a fine of Rs.500/- and in default of payment of fine, SI of 15 days for the offence punishable under Section 66(1)B of the Act and sentenced to suffer RI for a period of one year and fine of Rs.1000/- and in default of payment of fine, SI for one month for commission of the offence punishable under Sections 65(a) and 65(e) of the Act.
4. As per the prosecution case the petitioners were traveling along with the prohibited spirit and/or intoxicating substance. They were coming from Punjab to Maharashtra in Truck bearing registration No. PB-30-B-9238. The petitioners entered the prohibited territory of Gujarat State without valid pass and permit and, therefore, Truck was intercepted at Jalthan

on 7.5.2005. The petitioners were arrested along with the prohibited goods and vehicle.

5. In this connection an FIR No. II 944/2005 came to lodged before the concerned Bardoli Prohibition Police Station for commission of the offence punishable under Section 66(1)(b), 65 (a), 65 (e), 81 and 116(1) of the Act. After investigation they were charge sheeted before the JMFC, Bardoli where the case was registered as Criminal Case No. 2232 of 2005. During trial the petitioners pleaded not guilty to the charge and therefore they were put on trial.

6. To bring home the charges leveled against the petitioners, the prosecution examined in all five following witnesses:

Sr.No.	Name	Exh.
1	Jagdishbhai Savabhai Makwana, Panch	7
2	Murlidharbhai Dalphatbhai Vadi, Proh. Sub Inspector.	9
3	Karshanbhai Malabhai Malivad, Proh. ASI State Striking Force No.2, Prohibition, Gujarat State, Complainant.	10
4	Vamanrao Ramkishan Patil, Proh. SI, Bardoli Prohibition.	12
5	Bhanabhai Jivanbhai Sadavrati, Proh. Inspector, Bardoli Prohibition.	14

The prosecution also produced the following documents in support of their case:

Exh.	Details
8	Details of Muddamal seized from the accused.
11	Complaint.

At the end of the trial, the JMFC, Bardoli recorded the

order of conviction and sentence to which the reference is made earlier.

7. Aggrieved thereby, the petitioners filed appeal before the learned Additional Sessions Judge, Vyara, where it was registered as Criminal Appeal No. 1 of 2005. The learned Additional Sessions Judge dismissed the same and confirmed the order of conviction and sentence, which has given rise to the present petition at the instance of the original accused.
8. Mr. S.S. Mulia, learned advocate of the petitioners has argued the matter at length, however, he has restricted his submission only to reduction of quantum of sentence imposed upon the petitioners for commission of the offences punishable under Section 65(a) and (e) as, according to him, as per proviso to Section 65, for the first instance such imprisonment shall not be less than 6 months and fine shall not be less than Rs.500/-, therefore, according to him the learned trial Judge ought to have considered this proviso in view of the fact that the petitioners belonged to other State and they were passing through the Gujarat State. He, therefore, urged that the sentence recorded under Section 65(a) and 65(e) of the Act may be suitably reduced in terms of the said proviso.
9. Mr. H.M. Prachhak, learned APP contended that in view of the proviso to Section 65(a), appropriate orders may be passed.
10. This Court has considered the submissions advanced by the learned advocates appearing for the parties, perused the impugned order and the set of evidence supplied by the learned advocates for the parties during to the course of their submission.

11. So far as the order of conviction recorded against the petitioners, for commission of the alleged offence under Section 65(a) and 65 (e) as well as 66(1) (b) is concerned, it is not challenged. The challenge is only against recording of sentence under Section 65(a) and 65(e). As per the said Section who ever commits the offence shall, on conviction, be punished for each such offence with imprisonment for a term which may extend to three years and also with fine. However, as per the proviso, Court can impose the punishment of not less than 6 months and fine not less than Rs.500/- by recording special and adequate reasons.
12. In the instant case, the petitioners are from Punjab State and according to them they were transporting the contraband liquor to Maharashtra State and while passing through Gujarat State they were caught, as they have not got valid pass and permit. They are in the Jail from 4.7.2005, therefore, they have already undergone more than 2 months sentence.
13. In aforesaid view of the matter, according to this Court, if the sentence of 6 months is imposed upon the petitioners, it would meet the ends of justice. Therefore, this Court, by exercising powers under proviso to Section 65 (a) of the Act, propose to modify the sentence by awarding the sentence of 6 months instead of sentence of one year for commission of the alleged offence under Section 65(a) and 65(e) of the Act.
14. Seen in the above context, petition is required to be allowed partly qua modification of sentence only.
15. For the foregoing reasons, the petition succeeds in part and accordingly it is partly allowed. The

petitioners are ordered to suffer RI for a period of 6 months instead of SI of one year, for commission of the alleged offence punishable under Section 65(a) and 65(e) of the Act. So far as the sentence awarded under Section 66(1)B of the Act is concerned, the same is maintained. It is further ordered that the sentence awarded under Sections 65(a) and 65 (e) as well as 66(1)B of the Act, shall run concurrently. Rule is made absolute to the aforesaid extent.

Direct service permitted.

(A.M.Kapadia, J)

Jayanti*